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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,641	12/19/2000	Laurent Bensemana	6670/01093US0	4378
7590 11/21/2005			EXAMINER	
DARBY & DARBY P.C 805 Third Avenue New York, NY 10022-7513			JEANTY, ROMAIN	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/740,641		BENSEMANA, LAURENT	
	Examiner		Art Unit	
	Romain Jeanty		3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-17 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-17 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 6, 2005 has been entered. Claims 1, 3-17, and 25 are pending in the application.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 3-17, and 25 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "entering said consumer's reaction. It is unclear as to what reaction applicant is referring. It is further unclear how the consumer's reaction can be entered if it has not been created or established. Appropriate action is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1, 3-17 and 25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts of:
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

Furthermore, mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

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While claims 1, 3-17, and 25 apply, involve, use, or advance the technological arts, however, they are deemed to be non-statutory for failure to produce a useful, concrete, and tangible result (i.e., nothing is done with the entered consumer's reaction).

Claims 3-17 and 25 depend from independent claim 1; therefore are rejected under 35 U.S.C. 101.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3-17, and 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering (U.S. Patent No. 6,298,348) in view of David (Survey Data: Use of Scatter Plots for Displaying Scale and Consistency Factors).

As per claims 1, 4-8, 12-16, and 25, Eldering disclose a consumer profiling system comprising:

initially establishing a consumer's self-perceived consumption behaviour profile; means for monitoring said consumer's behaviour to create an actual behaviour derived consumption profile (col. 7, lines 11-19), means for comparing said consumer's self-perceived consumption behaviour profile with the consumer's actual behaviour derived consumption profile to identify consistencies and inconsistencies, means for creating a consumer's "true" consumption behaviour profile based on the consumer's self-perceived consumption behaviour profile, the consumer's

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actual behaviour derived consumption profile (monitoring the consumer's habits and creating an accurate profile of the consumer) (col. 6, lines 37-47). Eldering does not express discloses attributing a weight to the consistency and inconsistencies... David in the same field of endeavor discloses the concept of rating consistencies of survey responses of a user. Note pages 99-101 of David. Therefore, it would have been obvious to a person of ordinary skill in the art to modify the disclosures of Eldering to include the teachings of David because such a modification would allow Eldering to pinpoint specific issues needing attention.

As per claim 17, Eldering further discloses wherein said system further comprises means for attributing an appropriate weighting to the consistencies and inconsistencies existing between the said consumer's self-perceived consumption behaviour profile with the tracked said consumer's actual behaviour derived consumption profile (i.e., a weighing factor for weighing particular product purchased at particular time) (col. 10, lines 43-54).

As per claim 3, Eldering further discloses wherein said means for comparing said initial consumer profile with the tracked behaviour of said consumer further includes means for logging consistencies and inconsistencies of the tracked behaviour of said consumer in a reaction log (storing the consumer's data) (col. 9, lines 29-35).

As per claim 9, Eldering further discloses wherein said means for establishing an initial consumer's self-perceived consumption profile includes a questionnaire to be answered by said consumer (col. 9, lines 51-60).

As per claim 10, Eldering further disclose wherein said means for tracking said consumer's actual consumption pattern behaviour include means for tracking inquiries and purchases (col. 6, lines 33-44).

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9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering and David as applied to claim 1 above and further in view of Honarvar (U.S. Patent No. 6,430,542).

As per claim 11, Eldering and David fails to explicitly disclose tracking simulations. Honarvar in the same field of endeavor, discloses the concept of tracking simulation (col. 20, lines 45-52). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Eldering and David to include the tracking simulations of Honarvar with the motivation to allow for detailed customer-level analysis.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Brown (U.S. Patent No. 6,611,842) discloses a method for classifying individual personal preferences for products purchased by the individual.

b. Tuzhilin (U.S. Patent No. 6,236,978) discloses a method for generating user profile where the profile includes the user factual information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached on Mon-Thurs 7:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 31, 2005

Romain Janty
Primary Examiner
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